Said Mir Bahrami v Pengarah Penjara Sungai Buloh, Selangor

FEDERAL COURT (PUTRAJAYA) — CRIMINAL APPEAL NO 05–68–05 OF 2012(W)
RAUS SHARIF PCA, ZULKEFLI CJ (MALAYA), HASHIM YUSOFF, AHMAD MAAROP AND SULONG MATJERAIE FCJJ
18 JANUARY 2013

Civil Procedure — Appeal — Appeal to Federal Court — Afghanistan citizen wanted by Australian Government for committing offences under Australian Migration Act 1958 — Request by Australian for provisional warrant of arrest — Order of remand — Application for writ of habeas corpus — Whether arrest and detention invalid — Whether appellant deprived of fundamental right of fair trial — Extradition Act 1992 ss 13(1)(b) & 16(1)

The present appeal concerned an Afghanistan citizen who was wanted by the Australian Government for committing two offences under s 233C and 23 offences under s 233A of the Australian Migration Act 1958. Pursuant to article 8 of the extradition treaty between the Malaysian and Australian government ('the treaty'), the Australian government had sent a request for a provisional warrant of arrest to be issued against the appellant by the Malaysian government. The prosecution had applied to the magistrate's court for a provisional warrant of arrest to be issued against the appellant pursuant to s 13(1)(b) of the Extradition Act 1992 ('the Act'). The application was allowed and the appellant was apprehended by the police and produced before the magistrate's court pursuant to s 16(1) of the Act. At the magistrate's court, the appellant was ordered to be remanded at the Sungai Buloh Prison for a period of 60 days, which was subsequently extended on application by the prosecution. A formal request was made by the Australian government for the extradition of the appellant and the prosecution filed an application for extradition of the appellant before the sessions court and the application was allowed. While waiting for the order to be extradited to Australia, the appellant was committed to Sungai Buloh Prison. Aggrieved, the appellant filed an application for a writ of habeas corpus in High Court, alleging that his arrest and detention at Sungai Buloh Prison was invalid and prayed that the order of the sessions court judge to commit him to Sungai Buloh Prison to await the order by the Minister for his extradition, be quashed. The High Court dismissed the appellant's application and affirmed the decision of the sessions court. Hence, the present appeal. The appellant submitted that ss 4 and 20 of the Act and article 4(6) of the treaty were draconian provisions because by dispensing the proof of prima facie, the appellant had been deprived of his fundamental right of a fair trial. It was further submitted that the identity of the appellant was still required to be strictly proved having regard to the rules of

natural justice which ought to prevail over both s 20 of the Act and article 4(6) of the treaty. The appellant argued that the identity of the appellant ought to be strictly proved and that the identification through a photo board was a primitive and weak form of identification.

Held, dismissing the appeal and affirming order of High Court:

(1) The court did not agree that the provisions were draconian in nature such as to deprive the appellant of his fundamental rights of a fair trial. Extradition proceeding is in the nature of a committal proceeding and cannot be equated with a trial proper. A committal proceeding of this nature was not a trial to determine the guilt of the appellant but only to determine whether the evidence adduced was sufficient to commit the appellant for the purpose of extradition (see para 15).

(2) Section 20 of the Act had been drafted in a comprehensive way which enables both the prosecution as well as the defence to be heard fairly. It lays down the need for the prosecution to provide the supporting documents in relation to the request for extradition. Further it also stipulates the necessity for the sessions court judge to be satisfied that the alleged act or omission of the fugitive criminal would if it had taken place in Malaysia constitute an offence under the laws of Malaysia. Notwithstanding this, s 20 of the Act also provides for the defence that could be raised by the fugitive criminal in opposing the application for extradition (see para 19).

(3) Identification through a photo board was sufficient enough for the purpose of identification of the appellant in an extradition proceeding. If there was anything unsatisfactory about the identification by photo board, then that was a matter for the sessions court judge. It was for him to decide whether the photo board was sufficient to establish the identity of the appellant and not for the present court. In this case, the sessions court was satisfied that the photo board together with sworn affidavit. The High Court Judge was right in not interfering with the said decision (see para 21).

(4) The arrest and detention of the appellant in Sungai Buloh Prison under the custody and supervision of the respondent pursuant to the order of the sessions court judge and the warrant of committal issued under s 20 of the Act was carried out in accordance with the applicable laws. The applicant failed to show any defect and/or irregularity on the part of the enforcement agency and the sessions court judge in applying the procedure while dealing with this case (see para 23).

[Bahasa Malaysia summary

Rayuan ini berkenaan warganegara Afganistan yang dikehendaki Kerajaan Australia kerana melakukan dua kesalahan di bawah s 233C dan 23 kesalahan

di bawah s 233A Akta Migrasi 1958 Australia. Menurut artikel 8 triti ekstradisi antara kerajaan Malaysia dan Australia ('triti tersebut'), kerajaan Australia telah menghantar permohonan untuk waran tangkap sementara yang dikeluarkan terhadap perayu oleh kerajaan Malaysia. Pendakwaan telah memohon kepada mahkamah majistret untuk waran tangkap sementara dikeluarkan terhadap perayu menurut s 13(1)(b) Akta Ekstradisi 1992 ('Akta tersebut'). Permohonan itu dibenarkan dan perayu telah ditahan oleh polis dan dikemukakan di hadapan mahkamah majistret menurut s 16(1) tersebut. Di mahkamah majistret, perayu telah diperintahkan agar ditahan di Penjara Sungai Buloh untuk tempoh 60 hari, yang mana berikutnya telah dilanjutkan atas permohonan oleh pendakwaan. Satu permohonan rasmi telah dibuat oleh kerajaan Australia untuk ekstradisi perayu dan pendakwaan telah memfailkan permohonan ektradisi perayu di hadapan mahkamah sesyen dan permohonan itu telah dibenarkan. Sementara menunggu perintah diektradisikan ke Australia, perayu telah ditahan di Penjara Sungai Buloh. Berasa terkilan, perayu telah memfailkan permohonan writ habeas corpus di Mahkamah Tinggi, mendakwa bahawa tangkapan dan penahanannya di Penjara Sungai Buloh adalah tidak sah dan memohon agar perintah hakim mahkamah sesyen untuk menahannya di Penjara Sungai Buloh sementara menunggu perintah oleh Menteri untuk ekstradisinya, dibatalkan. Mahkamah Tinggi telah menolak permohonan perayu dan mengesahkan keputusan mahkamah sesyen. Justeru rayuan ini. Perayu berhujah bahawa ss 4 dan 20 Akta tersebut dan artikel 4(6) triti merupakan peruntukan-peruntukan lapuk kerana dengan melupuskan bukti prima facie, perayu dinafikan hak asasinya untuk perbicaraan yang adil. Adalah selanjutnya dihujahkan bahawa identiti perayu masih perlu dibuktikan secara tegas mengambil kira rukun keadilan asasi yang patut kekal mengatasi kedua-dua s 20 Akta tersebut dan artikel 4(6) triti tersebut. Perayu berhujah bahawa identiti perayu patut dibuktikan sewajarnya dan bahawa pengecaman melalui gambar foto di papan kenyataan adalah cara pengecaman primitif dan tidak kukuh.

Diputuskan, menolak rayuan dan mengesahkan perintah Mahkamah Tinggi:

(1) Mahkamah tidak bersetuju bahawa peruntukan-peruntukan tersebut adalah bersifat lapuk sehingga menafikan perayu hak asasinya untuk perbicaraan adil. Prosiding ekstradisi sememangnya bersifat prosiding komital dan tidak boleh disamakan dengan perbicaraan yang teratur. Prosiding komital bersifat sedemikian bukan perbicaraan untuk menentukan kesalahan perayu tetapi hanya untuk menentukan sama ada keterangan yang dikemukakan adalah mencukupi untuk mensabitkan perayu bagi tujuan ekstradisi (lihat perenggan 15).

(2) Seksyen 20 Akta tersebut telah digubal secara komprehensif untuk membolehkan kedua-dua pendakwaan dan pembelaan didengar secara adil. Ia membentangkan keperluan untuk pendakwaan mengemukakan dokumen-dokumen berkaitan permohonan ekstradisi itu. Selanjutnya ia

juga menetapkan keperluan untuk hakim mahkamah sesyen berpuas hati bahawa perbuatan atau peninggalan yang didakwa itu oleh penjenayah pelarian akan membentuk satu kesalahan di bawah undang-undang Malaysia jika ia berlaku di Malayia. Walaupun begitu, s 20 Akta tersebut juga memperuntukkan pembelaan yang boleh ditimbulkan oleh penjenayah pelarian dalam membantah permohonan ekstradisi itu (lihat perenggan 19).

(3) Pengecaman melalui gambar foto di papan kenyataan adalah mencukupi bagi tujuan pengecaman perayu dalam prosiding ekstradisi. Jika terdapat apa-apa yang tidak memuaskan tentang pengecaman melalui gambar foto di papan kenyataan itu, maka itu adalah perkara untuk ditentukan oleh hakim mahkamah sesyen. Beliau perlu memutuskan sama ada gambar foto di papan kenyataan itu mencukupi untuk membuktikan identiti perayu dan bukan untuk mahkamah ini. Dalam kes ini, mahkamah sesyen berpuas hati dengan gambar foto di papan kenyataan itu dan afidavit bersumpah itu. Hakim Mahkamah Tinggi adalah betul kerana tidak campur tangan dengan keputusan tersebut (lihat perenggan 21).

(4) Tangkapan dan penahanan perayu di Penjara Sungai Buloh di bawah jagaan dan pengawasan responden menurut perintah hakim mahkamah sesyen dan waran komital yang dikeluarkan di bawah s 20 Akta tersebut telah dilaksanakan menurut undang-undang terpakai. Perayu telah gagal menunjukkan apa-apa kecacatan dan/atau salah aturan di pihak agensi penguatkuasaan dan hakim mahkamah sesyen dalam menggunapakai prosedur semasa mengendalikan kes ini (lihat perenggan 23).]

Notes

For cases on appeal to Federal Court, see 2(1) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 890–893.

Cases referred to

Chua Han Mow v Superintendent of Pudu Prison [1980] 1 MLJ 219, FC (refd)
Kindler v Canada (Ministry of Justice) (1991) 84 DLR (4th) 438, SC (refd)
Loh Kooi Choon v Government of Malaysia [1977] 2 MLJ 187, FC (folld)
R v Governor of Pentonville Prison, ex parte Voets [1986] 2 All ER 630, QBD (refd)

Legislation referred to

Extradition Act 1992 ss 4, 13(1)(b), 16(1), 20, 20(1)
Migration Act 1958 [AU] ss 233A, 233C

Appeal from: Criminal Application No 44–6–01 of 2012 (High Court, Kuala Lumpur)

Karpal Singh (Karpal Singh & Co) for the appellant.

Noorin Badruddin (Mohd Dusuki bin Mokhtar and Kamal Bahrin Omar with her) (Senior Federal Counsel, Attorney General's Chambers) for the respondent.

Raus Sharif PCA (delivering judgment of the court):

INTRODUCTION

[1] This is an appeal by the appellant, a citizen of Afghanistan, against the decision of the High Court Kuala Lumpur dated 24 April 2012. The High Court had dismissed the appellant's application for a writ of habeas corpus and thus affirming the decision of the learned sessions court judge in detaining the appellant at the Sungai Buloh Prison pending the issuance of an order by the Minister of Home Affairs ('Minister') for extradition to Australia under s 20 of the Extradition Act 1992 (Act 479) ('the Extradition Act').

[2] On 15 August 2012, we heard and dismissed the appeal. We now give our reasons.

BACKGROUND FACTS

[3] On 19 July 2011, the Government of Australia had sent a request for a Provisional Warrant of Arrest to be issued against the appellant by the Malaysian Government. The request was made pursuant to article 8 of the Extradition Treaty between the Government of Malaysia and the Government of Australia, ('the Treaty'). The appellant is wanted by the Australian Government to face prosecution in the Court of Australia for the following offences:

(a) two offences of organising or facilitating the bringing or coming to Australia of a group of five or more people, each of whom were non citizens, who had no lawful right to come to Australia, contrary to s 233C of the Australian Migration Act 1958 (Cth); and

(b) 23 offences of organising or facilitating the bringing or coming to Australia of another person, which person was a non-citizen who had no lawful right to come to Australia, contrary to s 233A of the Australian Migration Act 1958 (Cth).

[4] On 1 August 2011, the Attorney General's Chambers of Malaysia ('the prosecution') applied to the Kuala Lumpur Magistrate's Court for a Provisional Warrant of Arrest to be issued against the appellant pursuant to s 13(1)(b) of the Extradition Act. The application was allowed and the Provisional Warrant of Arrest was issued on the same date.

[5] The Provisional Warrant of Arrest was then handed to the Royal Malaysia Police for execution. On 5 August 2011 at around 11.10am, the appellant was apprehended by Chief Inspector Anpanandan Joseph at Berjaya Times Square Hotel, Kuala Lumpur. The appellant was produced before the Kuala Lumpur Magistrate's Court pursuant to s 16(1) of the Extradition Act at 3pm on the same day.

[6] The magistrate issued an order for the appellant to be remanded at the Sungai Buloh Prison for a period of 60 days, ie till 5 October 2011 which was subsequently extended on application by the prosecution.

[7] On 22 September 2011, a formal request was made by the Government of Australia for the extradition of the appellant.

[8] On 14 October 2011, the prosecution filed an application for extradition of the appellant before the Kuala Lumpur Sessions Court. The application was supported by an affidavit affirmed by Wan Ariff Muzammil bin Wan Mohamed, a Senior Federal Counsel of the Attorney General's Chambers. The affidavit exhibited a copy of the direction of the Minister under s 4 of the Extradition Act which reads:

> DIRECTION OF THE MINISTER UNDER SECTION 4 OF THE EXTRADITION ACT 1992 [ACT 479]
>
> WHEREAS Article 4(6) of the Treaty between the Government of Malaysia and the Government of Australia on Extradition ('the said Treaty') dated 15 November 2005 which entered into force on 28 December 2006 provides that neither Party shall require, as a condition to extradition pursuant to the said Treaty, that the other Party prove a prima facie case against the person sought,
>
> NOW THEREFORE, in the exercise of the powers conferred upon me by virtue of section 4 of the Extradition Act 1992 [Act 479], i. Dato' Seri Hishammuddin bin Tun Hussein, the Minister of Home Affairs, do hereby direct that in accordance with Article 4(6) of the said Treaty, the prima facie requirement shall be dispensed with and the procedure specified in section 20 of the said Act shall apply in relation to the extradition request made to Malaysia by the Government of Australia for the fugitive criminal SAID MIR BAHRAMI (also known as MOHANDES, REGI, SAID AMIR, HAJI, ASADI and RAOUF).
>
> Given under the hand and seal of the undersigned Minister this 5 day of October 2011.
>
> (seal) -sgd-
>
> DATO' SERI HISHAMUDDIN BIN TUN HUSSEIN
>
> Minister of Home Affairs

[9] On 29 December 2011, the Sessions Court judge of Kuala Lumpur heard

and allowed the application. The appellant was committed to Sungai Buloh Prison while waiting for the order by the Minister for the appellant to be extradited to Australia pursuant to s 20(1) of the Extradition Act.

[10] Aggrieved, the appellant filed an application for a writ of habeas corpus in High Court. He alleged that his arrest and detention at Sungai Buloh Prison was invalid and prayed that the order of the sessions court judge dated 29 December 2011, to commit him to Sungai Buloh Prison to await the order by the Minister for his extradiction be quashed.

ISSUES AND FINDINGS

[11] Before us, En Karpal Singh learned counsel for the appellant submitted that ss 4 and 20 of the Extradition Act as well as article 4(6) of the said Treaty are draconian provisions because by dispensing the proof of prima facie, the appellant had been deprived of his fundamental right of a fair trial. He also submitted that the identity of the appellant was still required to be strictly proved having regard to the rules of natural justice which ought to prevail over both s 20 of the Extradition Act and article 4(6) of the Treaty.

[12] In order to appreciate the learned counsel's argument, we produce ss 4 and 20 of the Extradition Act which reads:

> Direction of the Minister to apply procedure in section 20
>
> 4 Where the binding arrangement which has been entered into between Malaysia and any country for the extradition of fugitive criminals contains a provision for the prima facie requirement to be dispensed with either generally or in relation to a class or classes of offences, the Minister may give a direction in writing that the procedure specified in section 20 shall apply to such cases.
>
> Procedure before Sessions Court where a special direction has been given under section 4.
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> 20
>
> (1) Where a direction has been given by the Minister under section 4, the Sessions Court shall —
>
> (a) after hearing any representation made in support of the extradition request;
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> (b) upon the production of supporting documents in relation to the offence;
>
> (c) upon being satisfied that the alleged act or omission of the fugitive criminal would, if it had taken place in Malaysia, constitute an offence under the laws of Malaysia;

(d) if the fugitive criminal does not satisfy the court that there are substantial grounds for believing that —

(i) the offence is an offence of a political character, or that the proceedings are being taken with a view to try or punish him for an offence of a political character;

(ii) prosecution for the offence in respect of which his return is sought is barred by time in the country which seeks his return;

(iii) the offence is an offence under military law which is not also an offence under the general criminal law;

(iv) the fugitive criminal has been acquitted or pardoned by a competent tribunal or authority in the country which seeks his return or in Malaysia;

(v) the fugitive criminal has undergone the punishment provided by the law of the country which seeks his return or of Malaysia in respect of the extradition offence or any other offence constituted by the same conduct as that which constitutes the extradition offence;

(e) upon being satisfied that the fugitive is not accused of an offence, nor undergoing a sentence in respect of an offence, in Malaysia, other than the extradition offence in respect of which his return is sought,

commit the fugitive criminal to prison to await the order by the Minister for his surrender.

(2) In the proceedings before the Sessions Court under subsection (1) the fugitive criminal is not entitled to adduce, and the Court is not entitled to receive, evidence to contradict the allegation that the fugitive criminal has done or omitted to do the act which constitutes the extradition offence for which his return is sought.

(3) In this section, 'supporting documents' means

(a) any duly authenticated warrant for the arrest of the fugitive criminal issued by the country which seeks his return or any duly authenticated copy of such warrant;

(b) any duly authenticated document to provide evidence of the fugitive criminal's conviction or sentence or the extent to which a sentence imposed has not been carried out;

(c) a statement in writing setting out a description of, and the penalty applicable in respect of, the offence and a duly authenticated statement in writing setting out the conduct constituting the offence.

[13] We also now produced article 4 of the Treaty which provides the following:

EXTRADITION PROCEDURES AND SUPPORTING DOCUMENTS

1 A request of extradition shall be made in writing and sent through the diplomatic channel. A request from Australia to Malaysia shall be sent to the Minister charged with responsibility for fugitive criminals. A request from Malaysia to Australia shall be sent to the Attorney-General's Department. All documents submitted in support of a request for extradition shall be authenticated in accordance with Article 6. Three copies of the request and supporting documents shall also be provided. However the copies do not require authentication.

2 All requests shall be supported by:

(a) the details necessary to establish the identity and nationality of the person sought including, when possible, photographs and fingerprints, and a statement of the current location of the person, if known;

(b) a statement of each offence for which extradition is sought;

(c) a statement of the acts and omissions which are alleged against the person in respect of each offence for which the extradition is sought;

(d) the text of the laws creating each offence;

(e) the text of the laws describing the penalty which may be imposed; and

(f) a statement as to whether there is any limitation period in respect of proceedings or punishment.

3 If the person is accused of an offence the request for extradition shall be accompanied by a warrant for the arrest of the person, or a copy thereof.

4 If the person has been convicted of an offence and a sentence has been imposed, the request for extradition shall be accompanied by:

(a) documents that provide evidence of the conviction; and

(b) documents that provide evidence of the sentence imposed and the extent to which the sentence has not been carried out.

5 If the person has been convicted of an offence and no sentence has been imposed, the request for extradition shall be accompanied by:

(a) documents that provide evidence of the conviction; and

(b) a statement confirming that a sentence is to be imposed.

6 Neither Party shall require, as condition to extradition pursuant to this Treaty, that the other Party prove a prima facie case against the person sought.

[14] Under article 4(6) of the said Treaty there is a binding arrangement between Malaysia and Australia in dispensing the proof of prima facie case for the extradition of a fugitive criminal. With that arrangement, the Minister is empowered by s 4 of the Extradition Act to give direction in writing (which the Minister did in this case) that the prima facie requirement shall be dispensed with and the procedure to be applied is s 20 of the Extradition Act.

[15] The question is whether the above provisions are draconian in nature such as to deprive the appellant of his fundamental rights of a fair trial. With respect, we do not think so. This is because extradition proceeding is in the nature of a committal proceeding. It cannot be equated with a trial proper. A committal proceeding of this nature is not a trial to determine the guilt of the appellant but only to determine whether the evidence adduced is sufficient to commit the appellant for the purpose of extradition.

[16] In *Chua Han Mow v Superintendent of Pudu Prison* [1980] 1 MLJ 219, Raja Azlan Shah CJ (Malaya) (as His Majesty then was) speaking on the same subject said it in the following words:

> an extradition proceeding is in the nature of a committal proceeding and a committal proceeding is not a trial. As the sole function of the committing magistrate is to adjudicate upon the question of whether there is a prima facie case against the accused, that is to say, whether there is such evidence that, if uncontradicted at the trial, a reasonable jury properly directed could convict upon it. Where there is a doubt as to the weight or quality of the evidence the committing magistrate should refrain from assessing it but instead commit the accused and leave the duty of resolving the doubt to the trial court.

[17] No doubt the words 'prima facie' was used, but reading the above paragraph as a whole, it means that the scope of exercising the discretion of admitting or rejecting the evidence by the committing magistrate is limited. This is understandable as 'extradition proceeding is founded on concepts of comity and reciprocity. It would undermine the effectiveness of the international treaty obligations if the courts were to superimpose directions based on local notions of fairness upon the ordinary rules of admissibility' (per Supreme Court of Canada in *Kindler v Canada (Ministry of Justice)* (1991) 84 DLR(4th) 438 at p 488).

[18] But, it does not mean that there is no rule or procedure that needs to be followed in extradition. Section 20 of the Extradition Act has been drafted in a comprehensive way which enables both the prosecution as well as the defence to be heard fairly. It lays down the need for the prosecution to provide the supporting documents in relation to the request for extradition. Further it also stipulates the necessity for the sessions court judge to be satisfied that the alleged act or omission of the fugitive criminal would if it had taken place in

Malaysia constitute an offence under the laws of Malaysia. Notwithstanding this, s 20 of the Extradition Act also provides for the defence that could be raised by the fugitive criminal in opposing the application for extradition.

[19] Section 20 of the Extradition Act may not have the usual safeguard as that of a trial, and it may appear to be harsh or 'draconian' as described by the learned counsel for the appellant, but it is a question of policy which had been debated and decided in Parliament. Speaking of 'harsh or unjust law' we can do no better than to quote what was said by Raja Azlan Shah (as His Majesty then was) in *Loh Kooi Choon v Government of Malaysia* [1977] 2 MLJ 187:

> The question whether the impugned Act is 'harsh and unjust' is a question of policy to be debated and decided in Parliament, and therefore not for judicial determination. To sustain it would cut very deeply into the very being of Parliament. Our courts ought not to enter this political thicket, even in such of worthwhile course as the fundamental rights guaranteed by the Constitution, for as was said by Lord Macnaghten in *Vacher & Sons Ltd v London Society of Compositors* [1913] AC 107 , 118. Some people may think the policy of the Act unwise and even dangerous to the community. Some may think it at variance with principles which have long been held sacred. But a judicial tribunal has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. The duty of the court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction. I apprehend, as unwise to as it is unprofitable to cavil at the policy of an Act of Parliament, or to pass a convert censure on the Legislature. … Those who find fault with the wisdom or expediency of the impugned Act, and with vexatious appearance of fundamental rights, normally must address themselves to the legislature, and not the court. They have their remedy at the ballot box.

[20] We adopt the same view. Thus, we see no merit on the submission made by learned counsel on this issue.

[21] Learned counsel for the appellant argued that the identity of the appellant ought to be strictly proved. He argued that the identification through a photo board was a primitive and weak form of identification, when in the present age there could be recourse to more advance form of identification such as tele-conferencing. We are of the view that identification through a photo board was sufficient enough for the purpose of identification of the appellant in an extradition proceeding.

In *R v Governor of Pentonville Prison, ex parte Voets* [1986] 2 All ER 630, it was held by Lloyd J that:

> … the photographs were admissible in the extradition proceedings because they were clearly relevant to prove identity …

Loyd J further held that:

A I should be most reluctant to be party to a decision that an identification parade is required in extradition cases. As I understand it, the practice has been to admit identification by photograph since at least the turn of the century: see *Rv Governor of Holloway Prison, ex p Siletti* (1902) 71 LJKB 935; [1900–3] All ER Rep 69. It has obvious advantageous of convenience. If there was anything unsatisfactory about the identification by photographs in the present case, then that was a matter for the B magistrate. It was for him to decide whether the identification by photographs was sufficient to establish a prima facie case and not for this court.

[22] Similarly in the present case, if there was anything unsatisfactory about C the identification by photo board, then that was a matter for the sessions court judge. It was for him to decide whether the photo board was sufficient to establish the identity of the appellant and not for this court. In this case the sessions court was satisfied that the photo board together with the affidavit sworn by Mr Rayner, the officer in charge of the team of AFP officers D investigating the alleged offences against the appellant, were in the view of the sessions court judge sufficient to commit the appellant for trial in Australia. The High Court judge was right in not interfering with the said decision. We have no reason to disagree.

E **[23]** In conclusion we find that, the arrest and detention of the appellant in Sungai Buloh Prison under the custody and supervision of the respondent pursuant to the order of the sessions court judge and the warrant of committal issued under s 20 of the Extradition Act was carried out in accordance with the applicable laws. The applicant had failed to show any defect and/or irregularity F on the part of the enforcement agency and the sessions court judge in applying the procedure while dealing with this case.

[24] For the above reasons, we dismissed the appeal. We affirmed the order of the High Court in dismissing the application for writ of habeas corpus and G accordingly we upheld the order granted by the sessions court judge in detaining the appellant at the Sungai Buluh Prison pending the issuance of the order by the Minister for the appellant's extradition to Australia.

Appeal dismissed and order of the High Court affirmed. H

Reported by Afiq Mohamad Noor

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